APPEAL NO. 002538

Following a contested case hearing held on September 25, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant) had not been unable to obtain and retain employment as a result of the compensable injury. The claimant asserts that the evidence was not sufficient to support the hearing officer's determination. The respondent (carrier) responded that the hearing officer's decision was correct and should be affirmed.

DECISION

Affirmed.

Evidence was adduced at the hearing that the claimant sustained an undisputed bilateral carpal tunnel injury (CTS) on _____. It was undisputed that the claimant continued to work for (employer 1) from the date of injury until late February 2000. At that time, the claimant quit employer 1 and went to work for (employer 2). The reason given for the move was that the new job represented a better opportunity.

On March 28, 2000, the claimant quit employer 2 because her husband was to be transferred in his job and the family would have to move. In mid-April, the claimant determined that she and her husband would not be moving and she called employer 2 to see if her old job was open. It had been filled and was no longer available.

The claimant had received some medical treatment for the compensable injury in 1999, as reflected in the medical records, but had not missed any work. On February 15, 2000, the claimant began treating with Dr. H. At that time, Dr. H scheduled four weeks of physical therapy and released the claimant to continue full duty. On April 18, 2000, Dr. H determined that conservative treatment and physical therapy were not effective and recommended surgery. Dr. H took the claimant off work pending the surgery, but it is noted that the claimant had already quit her job with employer 2 and had not been successful in returning to work for them.

Shortly before surgery on the claimant's left wrist was to take place, it was discovered that the claimant was pregnant. Surgery was postponed until the claimant gave birth. Dr. H did not release the claimant to return to work. The claimant's obstetrician has provided a letter stating that the claimant is not restricted from working as a result of the pregnancy. The claimant argues on appeal, as it did at the hearing, that her condition is serious enough that Dr. H took her off work because of the bilateral CTS and the bilateral CTS is the only thing preventing the claimant from working, thereby causing disability.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). A claimant's testimony is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues and different inferences may be drawn from the evidence presented, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge